

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7652 of 1990

with

CIVIL APPLICATION NO. 11101 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -
3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?

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J J BHATT

Versus

STATE OF GUJARAT

Appearance:

MR IS SUPEHIA for Petitioner

MR VB GHARANIYA, AGP for Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 12/02/99

ORAL JUDGEMENT

This petition has been filed for quashing the impugned orders dated 29-10-1988 and 15-2-89 whereby the Government directed not to revise the original fixation

of his pay and to restore the salary of the petitioner, if his salary has not been revised and no higher grade was fixed and for a direction to the respondents restraining them, their servants or agents, permanently from recovering any amount of excess payment made to the petitioner on account of grant of selection grade to him with effect from 1-7-1979.

2. The petitioner was working as a Gujarati Stenographer Gr. I in Narmada and Water Resources Department, Sachivalaya, Gandhinagar from 17-7-1980. The petitioner was given selection grade. But subsequently, that selection grade was withdrawn by the order dated 29-10-1988 and 15-2-1989 with retrospective effect as if no selection grade was given to the petitioner.

3. The petitioner has retired on 30-11-1994. The Department has withheld the amount of gratuity and his final pension has not yet been settled. The contention of the learned counsel for the petitioner is that the selection grade of the petitioner has been withdrawn without giving an opportunity of hearing to the petitioner. The action of the respondents withdrawing the selection grade is illegal, arbitrary and against the principles of natural justice.

4. Learned counsel for the petitioner states that the impugned orders dated 29-10-1988 and 15-2-1989 require to be quashed and the petitioner be given opportunity of hearing before passing the final order regarding withdrawal of selection grade and the respondents be directed to decide the matter in accordance with law by a speaking order within stipulated time after giving a reasonable opportunity of hearing to the petitioner.

5. Heard the learned counsel for the parties and perused the relevant papers. I am of the view that the orders withdrawing selection grade are not sustainable in the eye of law and against the principle of natural justice.

6. Considering the facts and circumstances of this case, the impugned orders dated 29-10-1988 and 15-2-1989 are quashed and the authority concerned is directed to decide the matter regarding the withdrawal of the selection grade after giving a reasonable opportunity of hearing within a period of two months by a speaking order.

7. Learned counsel for the petitioner pointed out that during the pendency of this petition, higher grade was not granted to the petitioner. The concerned authority is also directed to consider the same along with the decision of the matter, from the date of presentation of a certified copy of this order.

8. Accordingly, this petitioner is allowed. Rule is made absolute to the aforesaid extent, with no order as to costs. Interim order, if any, stands vacated.

9. In view of the above order in the main petition, Civil Application No.11001/98 does not survive and accordingly the same is disposed of with no order as to costs.

9 Certified copy of this order be issued to the parties within three days on payment of usual charges.

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/JVSatwara/